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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,131	09/05/2000	Maurice Clarence Kemp	MORN-0006 (108347.00017)	7549
7590	01/28/2004		EXAMINER	
T Ling Chwang Jackson Walker LLP 2435 North Central Expressway Suite 600 Richardson, TX 75080			PAK, JOHN D	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/655,131

Applicant(s)

KEMP ET AL.

Examiner

JOHN D PAK

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,5,7,9 and 12-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,8,10-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

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Claims 1-58 are pending in this application.

Claims 2, 4-5, 7, 9 and 12-58 stand withdrawn from further consideration as being directed to non-elected subject matter. Claims 1, 3, 6, 8 and 10-11 will presently be examined to the extent that they read on the elected subject matter of record, Mg, lactic acid, and sulfuric acid anion.

Claims 1, 3, 6, 8 and 10-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 4, 7, 9, 10, 12, 16, 17, 19-22, 24, 27, 29 and 31-32 of U.S. Patent No. 6,572,908 for the reasons of record set forth in the previous Office action with respect to claims 1, 3 and 10-11 (see page 2 of Paper No. 10, 8/8/03). The same reasons apply to the above noted rejected claims. Applicant's arguments have been given due consideration, but they were deemed unpersuasive because a double patenting ground of rejection is not only relevant to patent term but co-ownership of the involved patents.

Claims 1, 3, 6, 8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/48469 for the reasons of record set forth in the previous Office action with respect to claims 1, 3 and 10-11 (see pages 3-4 of Paper No. 10). The same reasons apply to the above noted rejected claims. Applicant's arguments have been given due consideration, but they were deemed unpersuasive. An organic acid "generated from a salt of the organic acid" fails to further distinguish from the cited reference, because such language, without more, does not actually mean that the acid is any different from other acids. Since the organic acid is required, and organic acid is

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taught, the feature is met. The fact that it must be generated from a salt of the organic acid does not change the fact that the same organic acid is required. The fact that it is generated from the salt of the organic acid does not change the acid in the absence of additional claim language.

This Office action is being made non-final due to inclusion and examination of previously withdrawn claims.


Any inquiry concerning this communication or earlier communications from the Examiner should be directed to JOHN PAK whose telephone number is (703)308-4538.

**Examiner Pak's telephone number will change on February 3, 2004. Examiner Pak's new number will be (571)272-0620, effective February 3, 2004.** The Examiner can normally be reached on Monday to Friday from 8 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's SPE, Thurman Page, can be reached on (703) 308-2927. Mr. Page's telephone number will change on February 3, 2004. Mr. Page's new number will be (571)272-0602, effective February 3, 2004.

The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1235.

  
JOHN PAK  
PRIMARY EXAMINER  
GROUP 1000